

HOUSE BILL NO. 597

INTRODUCED BY C. KAUFMANN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO FOOD SERVICE ESTABLISHMENTS; ESTABLISHING A SCHEDULE OF LICENSURE FEES BASED ON RISK LEVEL CATEGORIES; SPECIFYING THAT FUNDS BE USED FOR ENFORCEMENT FROM LICENSE FEES; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO REVIEW AND REPORT TO THE LEGISLATURE ON FUNDS RECEIVED FROM LICENSE FEES; AMENDING SECTIONS 50-50-102, 50-50-205, AND 50-50-305, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-50-102, MCA, is amended to read:

"50-50-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Baked goods" means breads, cakes, candies, cookies, pastries, and pies that are not potentially hazardous foods.

(2) (a) "Commercial establishment" means an establishment operated primarily for profit.

(b) The term does not include a farmer's market.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Establishment" means a food manufacturing establishment, meat market, food service establishment, food warehouse, frozen food plant, commercial food processor, or perishable food dealer.

(5) "Farmer's market" means a farm premises, a roadside stand owned and operated by a farmer, or an organized market authorized by the appropriate municipal or county authority.

(6) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

(7) "Food manufacturing establishment" means a commercial establishment and buildings or structures in connection with it used to manufacture or prepare food for sale or human consumption, but does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants,

1 slaughterhouses, or meat packing plants.

2 (8) (a) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria,
3 short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or
4 beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding
5 establishment, catering kitchen, commissary, private organization routinely serving the public, or similar
6 place where food or drink is prepared, served, or provided to the public with or without charge.

7 (b) The term does not include establishments, vendors, or vending machines that sell or serve only
8 packaged, nonperishable foods in their unbroken, original containers or a private organization serving food
9 only to its members.

10 (c) The term does not include an establishment, as defined in 50-51-102, that serves food only
11 to its registered guests.

12 (9) (a) "Food warehouse" means a commercial establishment and buildings or structures in
13 connection with it used to store food, drugs, or cosmetics for distribution to retail outlets.

14 (b) The term does not include a wine, beer, or soft drink warehouse that is separate from facilities
15 where brewing occurs.

16 (10) "Frozen food plant" means a place used to freeze, process, or store food, including facilities
17 used in conjunction with the frozen food plant, and a place where individual compartments are offered to
18 the public on a rental or other basis.

19 (11) "High-risk process" means a process that involves smoking, curing, reduced-oxygen
20 packaging, or hermetic sealing of food.

21 ~~(11)~~(12) "Meat market" means a commercial establishment and buildings or structures in
22 connection with it used to process, store, or display meat or meat products for sale to the public or for
23 human consumption.

24 ~~(12)~~(13) "Nonprofit organization" means any organization qualifying as a tax-exempt organization
25 under 26 U.S.C. 501.

26 ~~(13)~~(14) "Perishable food dealer" means a person or commercial establishment that is in the
27 business of purchasing and selling perishable food to the public.

28 ~~(14)~~(15) "Person" means a person, partnership, corporation, association, cooperative group, or
29 other entity engaged in operating, owning, or offering services of an establishment.

30 ~~(15)~~(16) (a) "Potentially hazardous food" means a food that is natural or synthetic and is in a form

1 capable of supporting:

2 (i) the rapid and progressive growth of infectious or toxigenic microorganisms; or

3 (ii) the growth and toxin production of *Clostridium botulinum*.

4 (b) The term includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or
5 heat-treated, and a food of plant origin that is heat-treated or consists of raw seed sprouts.

6 (c) The term does not include:

7 (i) an air-cooled, hard-boiled egg with intact shell;

8 (ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24° C
9 (75° F);

10 (iii) a food with a water activity (aw) value of 0.85 or less;

11 (iv) a food in an unopened hermetically sealed container that is commercially processed to achieve
12 and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

13 (v) a food for which laboratory evidence is accepted by the department as demonstrating that
14 rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of
15 *Clostridium botulinum* cannot occur.

16 ~~(16)~~(17) (a) "Preserves" means processed fruit or berry jams, jellies, compotes, fruit butters,
17 marmalades, chutneys, fruit aspics, fruit syrups, or similar products that have a hydrogen ion concentration
18 (pH) of 4.6 or below when measured at 24° C (75° F) and that are aseptically processed, packaged, and
19 sealed.

20 (b) The term does not include:

21 (i) tomatoes or food products containing tomatoes; or

22 (ii) any other food substrate or product preserved by any method other than that described in
23 subsection ~~(16)(a)~~ (17)(a).

24 ~~(17)~~(18) "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at a
25 farmer's market in their natural state that are not packaged and labeled and are not:

26 (a) cooked;

27 (b) canned;

28 (c) preserved, except for drying;

29 (d) combined with other food products; or

30 (e) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures.

1 (19) "Risk level" means the following:

2 (a) "risk level one" means an establishment that provides only nonpotentially hazardous food or
3 low-risk potentially hazardous food;

4 (b) "risk level two" means an establishment that provides potentially hazardous food other than
5 or in addition to food categorized as low-risk potentially hazardous food that is prepared and served on the
6 same day;

7 (c) "risk level three" means an establishment that provides potentially hazardous food other than
8 or in addition to food categorized as low-risk potentially hazardous food that is not prepared and served
9 on the same day;

10 (d) "risk level four" means an establishment that uses a high-risk process in preparing food."

11
12 **Section 2.** Section 50-50-205, MCA, is amended to read:

13 **"50-50-205. License fee -- late fee -- preemption of local authority -- exception.** (1) For each
14 license issued, the department shall collect a fee of \$60. ~~It shall deposit 85% of the fees collected under~~
15 ~~this section into the local board inspection fund account created in 50-2-108, 7.5% of the fees into the~~
16 ~~general fund, and 7.5% of the fees into the account provided for in 50-50-216 based on the risk level~~
17 categorization of the establishment as follows:

18 (a) risk level one, \$60;

19 (b) risk level two, \$90;

20 (c) risk level three, \$120; or

21 (d) risk level four, \$150.

22 (2) If more than one establishment is operated on the same premises and under the same
23 management and ownership, the department shall collect a single license fee based upon the categorization
24 of the establishment that falls within the highest risk level applicable under subsection (1).

25 (3) (a) The department shall deposit 92.5% of the fees collected under subsection (1) into the
26 local board inspection fund account provided for in 50-2-108.

27 (b) The remaining 7.5% of the fees collected under subsection (1) must be deposited into the
28 account provided for in 50-50-216.

29 ~~(2)~~(4) In addition to the license fee required under subsection (1), the department shall collect a
30 late fee from any licensee who has failed to submit a license renewal fee prior to the expiration of the

1 licensee's current license and who operates an establishment governed by this part in the next licensing
2 year. The late fee is \$25 and must be deposited in the account provided for in 50-50-216.

3 ~~(3)~~(5) A county or other local government may not impose an inspection fee or charge in addition
4 to the fee provided for in subsection (1) unless a violation of this chapter or rule persists and is not
5 corrected after two visits to the establishment.

6 ~~(4)~~(6) The fees in subsections (1) and ~~(2)~~ (4) may be paid by credit card and may be discounted
7 for payment processing charges paid by the department to a third party. However, the discounting of
8 license fees may not reduce the fees paid into the local board inspection fund account established in
9 50-2-108."

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11 **Section 3.** Section 50-50-305, MCA, is amended to read:

12 **"50-50-305. Department to pay local board for inspections and enforcement.** (1) Before June 30
13 of each year, the department shall pay to a local board of health, as established under 50-2-104,
14 50-2-106, or 50-2-107, an amount from the local board inspection fund account created in 50-2-108 that
15 ~~must~~ may be used only for the purpose of inspecting establishments licensed under this chapter and
16 enforcing the provisions of this chapter; ~~provided, however, that if:~~

17 (a) there is a functioning local board of health; and

18 (b) the local board of health, local health officers, sanitarians-in-training, and registered sanitarians:

19 (i) assist in inspections and enforcement of the provisions of this chapter and the rules adopted
20 under it; and

21 (ii) meet minimum program performance standards as established under rules adopted by the
22 department.

23 (2) The funds received by the local board of health pursuant to subsection (1) must be deposited
24 with the appropriate local fiscal authority and must be used ~~to supplement, but not supplant, other funds~~
25 ~~received by the local board of health that in the absence of funding received under subsection (1) would~~
26 ~~be made available for the same purpose~~ for the purpose of enforcing the provisions of this chapter.

27 (3) Funds in the local board inspection fund account not paid to the local board of health as
28 provided in subsection (1) may be used by the department, within any jurisdiction that does not qualify
29 to receive payments from the local board inspection fund account, to enforce the provisions of this chapter
30 and the rules adopted under it."

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2 NEW SECTION. **Section 4. Report to legislature -- review of fees.** The department of public health
3 and human services shall provide a written report to the legislative audit division and the legislative fiscal
4 division before the 2009 legislative session reviewing all license fees specified in 50-50-205 to determine
5 any inflationary adjustments necessary to continue financial support of the local inspection programs.

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7 NEW SECTION. **Section 5. Effective date.** [This act] is effective January 1, 2002.

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